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No. 90-1369

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

AMCA INTERNATIONAL FINANCE COMPANY, et al.,
Petitioners,

VS.

STEVEN K. HILGEDICK, etc., et al.,
Respondents.

SUPPLEMENTAL BRIEF PURSUANT TO SUPREME COURT RULE 15.7 IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

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RULE 29.1 NOTICE

The list of parent companies and affiliates of petitioners is set forth in the petition for a writ of certiorari.

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INTRODUCTION

In *Pacific Mutual Life Insurance Co. v. Haslip*, 59 U.S.L.W. 4157 (1991), decided March 4, 1991, this Court rejected a Fourteenth Amendment challenge to an award of punitive damages imposed by an Alabama jury. The Court held that the award passed constitutional muster because the jury instructions and the rigorous post-verdict review conducted by the Alabama trial and appellate courts ensured that the award was reasonable in amount and rationally related to the twin goals of retribution and deterrence. *Id.* at 4161-4163. The Court recognized, however, that in some cases, an award of punitive damages may be so "unreasonable" as to "cross the line into the area of constitutional impropriety." *Id.* at 4163.

When compared to the punitive damages awarded in *Pacific Mutual*, the $8.5 million punitive fine assessed against petitioners

does not withstand constitutional scrutiny. This huge sanction was imposed on the basis of conduct that, on its face, was permitted by the express terms of petitioners' lawful and valid contracts with respondents and Pacific Trencher. In these circumstances, an award of this magnitude cannot be reconciled with the notion of "reasonableness" that *Pacific Mutual* indicates is a cornerstone of a constitutional punitive damages award. See *Id.* at 4161, 4162.

Moreover, the procedural protections that surrounded the award of punitive damages in *Pacific Mutual* are conspicuously absent here. Unlike *Pacific Mutual*, where the trial and appellate courts evaluated the jury's award by applying detailed substantive criteria, appellate review of the punitive damages in the present case amounted to little more than a rubber-stamping of the jury's verdict. The predictable outcome of this process is an award of punitive damages that is so divorced from notions of fundamental fairness as to "jar one's constitutional sensibilities." *Id.* at 4161. It must therefore be reversed.[1]

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[1] The decision in *Pacific Mutual* does not address the additional question for review presented by petitioners: whether the Due Process Clause prohibits the imposition of tort liability and punitive damages for conduct permitted on the face of lawful and valid contracts in the absence of prior warning that such conduct is restricted or forbidden. *See* Pet.Cert., pp. i, 25-29. We note, however, that the imposition of tort liability in such circumstances appears to be inconsistent with the overarching "concerns of reasonableness" that *Pacific Mutual* indicates are to guide any inquiry into the constitutionality of an award of damages. *See* 59 U.S.L.W. at 4161.

ARGUMENT

THIS COURT'S RECENT DECISION IN *PACIFIC MUTUAL INSURANCE CO. v. HASLIP* DEMONSTRATES THAT THE $8.5 MILLION AWARD OF PUNITIVE DAMAGES INFLICTED ON PETITIONERS VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

In *Pacific Mutual*, the jury assessed punitive damages in a sum that was over four times as large as the compensatory damages. This Court concluded that, while this award may have been "close to the line," it was not constitutionally invalid because: (1) the jury instructions placed sufficient constraints on the jury's discretion by ensuring that the jurors understood that the award should be no larger than necessary to serve the state's interest in punishment and deterrence; (2) the trial court conducted a thorough review of the verdict pursuant to specified criteria, stating its findings on the record; and (3), most importantly, the Alabama Supreme Court also carefully scrutinized the award in light of "detailed substantive standards" it had developed for evaluating such awards. 59 U.S.L.W. at 4161-4163.[2] This appellate review made certain that the punitive damages were "reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.* at 4162.

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[2] The Alabama Supreme Court first announced these standards in *Green Oil Co. v. Hornsby*, 539 So.2d 218, 224-225 (Ala. 1989). There, the court directed courts to consider the following factors in reviewing awards of punitive damages: (a) the relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred; (b) the reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct; (c) the profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; (d) the defendant's "financial position"; (e) the costs of litigation; (f) the imposition of criminal sanctions on the defendant for its conduct, to be taken in mitigation; and (g) the existence of other civil awards against the defendant for the same conduct, also to be taken in mitigation.

The $8.5 million award inflicted on petitioners, by contrast, presents a textbook example of "punitive damages that 'run wild.' " *Id.* at 4161. The jury, which had been told that its power to punish was virtually limitless,[3] burdened petitioners with an enormous award of punitive damages which, even when remitted, is still larger than any punitive damages award upheld in any reported decision in California. *See* Pet.Cert., pp. 23-24 & n. 21. Moreover, this huge penalty was imposed for acts that appeared to be expressly authorized by petitioners' contractual arrangements with respondents and Pacific Trencher. *See* Pet.Cert., pp. 4-7, 18, 26-28.

Unlike *Pacific Mutual*, however, the post-verdict review in this case provided little, if any, protection against this arbitrary and excessive award. Indeed, the record reveals that the trial judge expressly approved the jury's decision to punish petitioners for doing that which their contracts appeared to authorize. In refusing to set aside or reduce as excessive the $5 million punitive damages award to Pacific Manufacturing, the trial judge stated that he was basing his decision, at least in part, on petitioners' refusal—pursuant to an express contractual provision (Pl.Exh. 22, Tab 1, p. 7, ¶ 6.8; 2 Appx. 225, 231)—to allow Pacific Trencher to guarantee performance of a government contract on which Pacific Manufacturing had submitted a bid. RT II 2098-2099, 2114-2116.[4]

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[3] The instructions expressly informed the jury that there were "no fixed standards" to follow in determining how large an award to impose. RT II 2075; *see* App. A, *infra*.

[4] Although the trial court remitted the $5 million award to Mr. Hilgedick to $2.5 million, this reduction failed to bring the award within constitutionally acceptable limits. Even as so reduced, the punitive damages awarded to Mr. Hilgedick are more than *50 times* larger than the $42,000 that the jury awarded to compensate him for the loss of rental income on the property he leased to Pacific Trencher. This award is "grossly out of proportion to the severity of the offense" and has no "understandable relationship to compensatory damages." *Pacific Mutual Insurance Co. v. Haslip, supra,* 59 U.S.L.W. at 4162.

Moreover, the California Court of Appeal's review of this incredible award was perfunctory at best. While the court paid lip service to the " 'relevant considerations' " that guide the punitive damages inquiry (Pet.Cert., App. A, p. 40), its power to disturb the award was circumscribed by the deferential "passion and prejudice" standard of review. As the court observed, in California the determination of punitive damages is " 'exclusively the function of the trier of fact,' " and an award of such damages will not be reversed unless it is so large as to indicate it was " 'rendered as the result of passion and prejudice.' " *Ibid.* Thus, the searching inquiry conducted by the Alabama courts in *Pacific Mutual* never took place in the case at bar.

The important role meaningful appellate review plays in a constitutional punitive damages system cannot be overstated. Indeed, in upholding the award in *Pacific Mutual*, the Court emphasized that the rigorous review conducted by the Alabama Supreme Court distinguished Alabama's punitive damages system from other schemes (such as that in place in California) in which awards are set aside only where they appear to result from passion and prejudice on the part of the jury. 59 U.S.L.W. at 4162, n. 10.

In any event, regardless of the procedures followed by the jury and the courts in this case, the award itself is so oppressive and disproportionate to petitioners' culpability as to render it excessive as a matter of substantive due process. In *Pacific Mutual*, this Court reaffirmed that the failure to provide meaningful limits on awards of punitive damages may invite "extreme results" that are "constitutionally unacceptable." *Id.* at 4161.[5] The $8.5 million

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[5] *See, e.g., St. Louis, I. Mt. & So. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919) (Due Process Clause prohibits civil penalties that are "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable"); *Missouri Pacific Ry. Co. v. Tucker*, 230 U.S. 340, 351 (1913) (Court invalidated jury award of liquidated damages that was "arbitrary and oppressive" and "grossly out of proportion to the possible actual damages"); *see also Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257, 109 S.Ct. 2909, 2923 (1989) (Brennan, J., concurring) (noting decisions indicating that "the Due Process Clause forbids damages awards that are 'grossly excessive' ").

punitive damages award imposed in this case is constitutionally unacceptable by any definition. Even after remittitur, this enormous penalty is over 11 times larger than the compensatory damages awarded to respondents. *See* Pet.Cert., pp. 6-7, 23-24. Moreover, the jury imposed this sanction on the basis of conduct that, on its face, was permitted by the express terms of petitioners' lawful and valid contracts.

When viewed against petitioners' conduct, these damages are neither "reasonable" in amount nor "rational" in light of their retributive and deterrent function; indeed, the award strains the interest in punishment and deterrence to the breaking point. Deterrence is a function of the defendant's understanding of what consequences will occur if a given course of conduct is followed. Hence, punitive damages will not rationally serve the interest in deterrence where, as here, they are imposed on the basis of conduct that, at the time it occurred, appeared to be permitted.

While numerous cases recently have raised constitutional challenges to punitive damages awards, it is difficult to imagine a more compelling scenario for reversal than that present here. The "extreme results" in this case cannot be squared with *Pacific Mutual* or with this Court's past precedents that define the boundaries of due process.

CONCLUSION

For the reasons stated above and in the petition for a writ of certiorari, petitioners respectfully request this Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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[Appendix Follows]

Appendix A

JURY INSTRUCTIONS REGARDING PUNITIVE DAMAGES
(Given May 12, 1987)

* * * * *

"Plaintiffs have already been awarded damages sufficient to compensate them for any and all legally compensable injuries incurred as a result of Defendants' actions which are the subject of this lawsuit. You are to consider whether or not you should award additional damages against the Defendants, called punitive damages, only for the sake of example and by way of punishment. You may in your discretion award such damages, if, but only if, you find that by a preponderance of the evidence that said Defendants were guilty of malice or oppression in the conduct on which the prior jury based its finding of liability.

" 'Malice' means conduct which is intended by the Defendant to cause injury to the Plaintiff or carried on by the Defendant with a conscious disregard for the rights of others. A person acts with conscious disregard of the rights of others when he is aware that his conduct will probably result in a violation of the rights of others and willfully and deliberately fails to avoid that consequence.

" 'Oppression' means subjecting a person to cruel and unjust hardship in conscious disregard of that person's rights.

"If you determine that punitive damages should be awarded, the law provides no fixed standards as to the amount of punitive damages you may award, but leaves that amount to the jury's sound discretion, exercised without passion or prejudice.

"In arriving at any award of punitive damages, you are to consider the following:

"The reprehensibility of the conduct of the Defendant;

"The amount of punitive damages which will have a deterrent effect on the Defendant in the light of Defendants' financial condition;

"That the punitive damages must bear a reasonable relationship to the actual damages." RT II 2074-2075.

* * * * *